



Thomas B. Weaver

Direct T 314.342.8021 F 314.612.2302

tweaver@atllp.com

July 21, 2020

VIA ECF system

Michael E. Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th St., Rm. 24.329
St. Louis, MO 63102

Re: *United States v. Ameren Missouri*, Eighth Circuit No. 19-3220

Dear Mr. Gans:

Ameren submits this response to the Rule 28(j) letters filed by United States and Sierra Club on July 9 and June 26, respectively, regarding *Liu v. SEC*, 520 U.S. ____ (June 22, 2020).

Ameren showed that the Labadie injunction constitutes a penalty under the principles outlined in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017). *Liu* did not retract or change those principles. It addressed a different and narrower question: whether disgorgement can qualify as “equitable relief” under statutory language authorizing the SEC to seek “any equitable relief.” Slip Op. at 1-3. Because the Clean Air Act (“CAA”), in contrast, does not authorize EPA to seek “any equitable relief,” *Liu* is inapposite.

Liu follows *Kokesh*, and will in turn be followed by *AMG Capital Management v. FTC* and *FTC v. Credit Bureau Center*, No. 19-508 (certiorari granted July 9, 2020), in a recent line of Supreme Court cases addressing statutory limitations on remedies available to regulatory agencies. These cases relate to two arguments Ameren presented in this appeal: (1) that the Labadie injunction constitutes a penalty that

United States waived; and (2) that the CAA does not authorize injunctions for wholly past violations. (Ameren's Opening Brief at 64-66, 72 & Reply at 32-33, 37-38; see also Brief of *Amici Curiae* at 16-19, 23-25.)

The *Kokesh-Liu-AMG-Credit Bureau* line of cases reinforces that statutory language limits available remedies. *Liu* involved a broad statutory authorization to the SEC to seek "any equitable relief." *AMG* and *Credit Bureau* involve a narrower statutory authorization to the FTC to seek "injunctions" "to prevent" "unfair or deceptive acts or practices," and/or "civil penalt[ies]." The CAA similarly narrowly authorizes EPA to seek "civil penalt[ies]" and "permanent or temporary injunction[s]" "to restrain [a] violation," "require compliance," or "prevent [] construction," and/or "civil penalt[ies]." 42 U.S.C. § 7413(b); 42 U.S.C. § 7477. In *AMG-Credit Bureau*, the Supreme Court will decide whether statutory authorization to seek "injunctions" permits the FTC to seek retrospective monetary relief in the form of restitution. Ameren raises an analogous issue here: whether the CAA's authorization to seek injunctions permits retrospective relief for wholly past violations.

Respectfully submitted,

/s/ Thomas B. Weaver

Thomas B. Weaver
Armstrong Teasdale LLP
7700 Forsyth Blvd, Suite 1800
St. Louis, Missouri 63105
Phone: 314-342-8021
tweaver@atllp.com

Attorney for Appellant Ameren Missouri

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Thomas B. Weaver
Thomas B. Weaver